

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Stephanie B. Barrett, et al

v.

Civil No. 06-cv-240-SM

Ambient Pressure Diving, Ltd.

ORDER

Re: Document No. 126, Assented to Motion for Leave to File  
Revised Discovery Plan and for Status Conference with Judge  
McAuliffe

Ruling:

Granted, in part. The parties may file an agreed-upon proposed amended pretrial scheduling order, or separate motions to amend the currently applicable order. Otherwise, the motion is denied.

The assented-to motion seems to contemplate a "work session" in which the parties and presiding judge will informally discuss and resolve substantive issues (choice of law, claims of privilege, etc.) and discovery matters (clarification of rulings regarding discovery; "location/timing/duration of deposition of Ambient," etc.). Certainly, the parties are free to mediate their differences, or to file appropriate pleadings designed to identify the legal issues in dispute and the applicable law in support of their respective positions. But the court does not generally rule on substantive legal disputes or discovery disputes based upon informal and off-the-cuff "working sessions" with counsel. Counsel are obligated to act in good faith and professionally in arranging depositions, producing discoverable material, scheduling, and managing the litigation under the applicable rules of procedure and the orders of this court. The proposed agenda is striking in that it addresses matters that ought to be easily resolved by counsel, or legal issues that will require briefing, and, in some cases, perhaps evidentiary hearings. The Rules of Civil Procedure do not contemplate an arbitration-like procedure before the presiding judge, but the parties are obviously free to agree to binding arbitration under any terms they choose. While the case is in litigation, it is

best handled as a litigation matter. Counsel ought to be cooperating with one another, but if they will not, there are means available to move the litigation forward without that cooperation.



Steven J. McAuliffe  
Chief Judge

Date: February 25, 2008

cc: Counsel of Record